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SIPDIS

FOR USTR-R.SMITH

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SUBJECT: GUATEMALA'S CABLE SUBMISSION FOR THE 2005 REPORT TO CONGRESS ON THE OPERATION OF CBERA

REF: STATE 188288

1. Below is Post's cable submission of the email version sent to USTR for the 2005 Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act (CBERA).

#### STATISTICS

Population statistics are drawn from the 2005 edition of the CIA World Fact Book. Per capita income figures reflect gross national income statistics published in the World Bank's 2006 World Development Report.

Population: 14,655,189

Per Capita GDP: USD 2,130 (2004)

Department of Commerce 2004 Trade Statistics:

U.S. Exports: USD 2,511,300,000

U.S. Imports: USD 3,154,000,000

U.S. Trade Balance: -USD 602,700,000

#### ECONOMIC REVIEW

The Guatemalan economy depends largely on agricultural production, including coffee, sugar, and bananas. In recent years, tourism and apparel assembly have become increasingly important generators of income and foreign exchange. Non-traditional agricultural exports such as winter vegetables and specialty fruits have also increased in recent years. Since the signing of the 1996 Peace Accords that ended a long civil war, Guatemala has adopted and maintained generally liberal, market-oriented economic policies. However, congressional divisions, corruption, a poor security environment, and lack of continuity in regulatory, tax, and other government policies are preventing Guatemala from achieving its full economic potential.

The economy grew by 2.7 percent in 2004, a slight increase from 2.1 percent growth in 2003. Causes for the improvement include economic recovery in Guatemala's main trading partners, higher prices for coffee, sugar and bananas, continued macroeconomic stability, and increased harmony between the government and the private sector. GDP is projected to grow by 3.2 percent in 2005, but the effects of Tropical Storm Stan on agricultural production and infrastructure have not yet been figured into these projections.

Apparel assembly activities have benefited from increased access to the U.S. market as a result of CBI enhancement, but some CBTPA adjustments have not favored Guatemala's textile industry and have hampered the sector's growth. Further, increased energy and labor costs, an overvalued local currency, and the WTO-mandated lifting of quotas in 2005 have affected the sector's competitiveness.

Guatemala suffers from one of the most serious income and wealth disparities in the Western Hemisphere. The 1996 Peace Accords commit the government to follow policies that fight the roots of poverty, including increased investment in health and education. The government has struggled to raise adequate revenue to meet these obligations and, due to congressional opposition, has failed to enact the fiscal reforms necessary to fulfill the government's commitment to a strengthened, progressive tax structure. It has also failed to provide adequate transparency in the use of public funds, although the installation of a government procurement web site, and the public posting of some reports, including the yearly IMF evaluation, are important steps forward.

#### COMMITMENT TO WTO AND FTAA

The Guatemalan government has generally sought to comply with its WTO obligations. The Central American countries approved common Customs Valuation legislation in June 2004, which enabled Guatemala to begin implementation of the WTO Customs Valuation Agreement in August 2004.

Guatemala is active in the FTAA process and chaired the Negotiating Group on Agriculture during the 2001-2002 and was Chair of the Services Negotiating Group from 1999-2001. As a member of the CACM, Guatemala, together with other Central American Countries has signed free trade agreements with

Mexico and the Dominican Republic. In addition, the CAFTA negotiations were concluded in December 2003, with entry into force targeted for January 1, 2006. CAFTA will further reduce trade barriers, promote economic development, encourage investment and provide greater transparency.

#### PROTECTION OF INTELLECTUAL PROPERTY

Guatemala enacted TRIPs consistent legislation in September 2000. This legislation was modified in 2003 to provide test data protection more consistent with international practice, but December 2004 legislation then effectively removed data protection for pharmaceutical products and agricultural chemicals. February 2005 legislation restored data protection in an effort to comply with the commitments of CAFTA-DR. The government has sought to address weaknesses in enforcement by appointing a special prosecutor to handle violations of intellectual property rights, and a number of cases have been pursued. Resource constraints and lack of training continue to impede enforcement efforts, however, and piracy of works protected by copyright and infringement of other forms of intellectual property such as trademarks remain problems.

#### PROVISION OF INTERNATIONALLY RECOGNIZED WORKER RIGHTS

The Guatemalan Constitution and Labor Code provide the rights of association and collective bargaining to workers. Labor laws apply equally in export processing zones (EPZs) as in the rest of the country. The Constitutional Court overruled the 2001 revisions to the Labor Code in August 2004. The chief effect of this ruling was to remove sanction authority from the Labor Inspectorate, which must now submit its findings to labor courts to assign fines to employers found not in compliance with the law. Moreover, implementation of the Labor Code has been weak due to budget constraints and institutional problems. During 2003 the Ministry of Trade worked closely with the Labor Ministry, threatening the revocation of export licenses of maquilas in EPZs that were not complying with labor laws. This resulted in the first fully implemented collective bargaining agreements between EPZ employers and trade unions since EPZs began operating in Guatemala. Only two of the more than 200 maquilas in Guatemala have labor unions, but both of them have achieved collective bargaining agreements.

The Government of Guatemala invited the ILO to conduct a labor law study in 2003. The study entitled, "Fundamental Principles and Rights at Work: A Labor Law Study," found that the Guatemalan Government gives effect through its laws to the core rights and principles identified in the ILO Declaration on Fundamental Principles and Rights at Work. The study does identify some ways in which the government could improve labor laws to enhance conformity with core ILO principles; however, it also notes that Guatemala carried out revisions of its Labor Code in 2001 with ILO advice and assistance. These revisions improved protections for workers against employer reprisal for engaging in union activities, facilitated the organization of unions and collective bargaining, and improved the Guatemalan Labor Ministry's capacity for enforcing labor laws. In 2004-2005, ahead of the Dominican Republic - Central American Free Trade Agreement (DR-CAFTA), Guatemala and the other negotiating countries requested that the Inter-American Development Bank (IDB) conduct an independent review of labor practices in the region. The resulting "white book" is now a blueprint for the Government of Guatemala to strengthen labor rights in the country.

Violence against workers and their representatives in Guatemala, and lack of prosecution in cases of such violence, have been matters of longstanding U.S. concern. Partly in response to those concerns, the U.S. Trade Representative has regularly received petitions for the withdrawal of Guatemala's GSP and CBI trade privileges due to failure to adequately protect labor rights. The U.S. Government has thoroughly reviewed these petitions, but judged that the charges did not warrant withdrawal of GSP and CBI benefits. The Government of Guatemala has taken a series of steps to address these concerns, including the creation of an inter-ministerial committee charged with protecting the rights of workers. The Labor Ministry actively participates on this committee. In addition, the Government has created a Special Prosecutor to investigate and prosecute these types of crimes, with increased staff and funding for this new office.

The Government of Guatemala can benefit from strengthening the labor court system. In 2003, the labor courts generally vindicated the majority of workers' claims. Nonetheless, Guatemalan courts have experienced difficulty disciplining parties that do not fully comply with legally binding court orders.

The Guatemalan Labor Ministry oversees a tripartite committee with labor and management representation, which makes recommendations for revisions in labor law, including increases in the minimum wage. In the event that agreement is not possible, the Government may decree such increases. The last such increase occurred in July 2004. Currently, the

committee is reviewing proposals by employers and labor for another increase. In addition, the Government created a unit in the Labor Ministry to verify compliance with minimum wages and to overcome weaknesses in enforcement. The standard workweek is forty-four hours. As almost 70 percent of the economy is in the informal sector, there are numerous allegations of workers compelled to work more hours without overtime or premium pay. Indeed, in many such cases workers do not receive the minimum wage or any ancillary benefits. Guatemala is engaged in labor cooperation activities with the U.S. Department of Labor, which include a regional technical assistance program aiming to increase the Labor Ministry's capacity to protect worker rights. The Central America project, which is funded with a fiscal year 2004 grant of USD6.75 million, will focus on increasing workers' and employers' knowledge of Guatemalan labor laws, strengthening labor inspections systems, and developing dispute resolution mechanisms. In 2005, Congress authorized an additional USD19 million for the Department of Labor and the U.S. Agency for International Development to undertake additional projects to strengthen labor rights in the region. These projects will receive an additional USD38 million per year for the three following years.

The application of occupational health and safety standards in Guatemala can be improved with modernization, as well as with more effective enforcement mechanisms. Notwithstanding antiquated laws dating back to 1957 and scarce resources, the Labor Ministry has made it a priority to train labor inspectors in health and safety standards. Workers have the legal right to remove themselves from dangerous workplace situations, and the law provides them with protection for their continued employment. Not all workers are fully confident that they may exercise this right without jeopardizing their employment.

Forced and compulsory labor are constitutionally prohibited and generally do not exist, with the exception of trafficking in persons for the purposes of sexual exploitation.

The Guatemalan Labor Code sets the minimum age for employment at 14 years. In some exceptional cases, the Labor Inspection Agency or a child's legal guardian can authorize work for children under the age of 14, provided that the work is related to an apprenticeship, is light work of short duration and intensity, is necessary due to conditions of extreme poverty within the child's family, and enables the child to meet compulsory education requirements in some way. Children are prohibited from working at night, overtime, and in places that are unsafe and dangerous.

#### COMMITMENTS TO ELIMINATE THE WORST FORMS OF CHILD LABOR

Guatemala ratified ILO Convention 182 on October 11, 2001. The government is taking steps to implement the Convention in order to address systemic problems in this area. The Labor Ministry administers a National Program for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers and cooperates with programs run by non-governmental organizations to combat child labor. Guatemala has signed a Memorandum of Understanding with the ILO-IPEC and is working with the ILO on various programs aimed at eliminating exploitative child labor.

The ILO reported in December 2002 that the number of child workers in Guatemala totaled 937,530. Between 3,000 and 5,000 children were employed in the illegal cottage-based fireworks industry, despite legal protection against the employment of children in dangerous occupations. Trafficking of children into prostitution is also an ongoing problem. The Government is taking steps to address this problem with the 2001 approval of the National Action Plan Against Commercial Sexual Exploitation of Adolescents.

Guatemalan law prohibits employment of children under the age of 14 and provides compulsory education through the sixth grade; however, only one-half of children actually complete primary school.

#### COUNTER-NARCOTICS COOPERATION

Guatemala is considered a major transshipment point for cocaine destined for the United States. In March 2003, the U.S. Government determined that Guatemala had "failed demonstrably during the previous 12 months to adhere to their obligations under counter-narcotics agreements." The Guatemalan government responded to the deteriorating quality of cooperation and anticipated de-certification by disbanding and reforming its corrupt anti-narcotics police. The Government subsequently created special narcotics, money laundering, organized crime and anti-corruption task forces incorporating police, prosecutors, and judges. The Guatemalan Government also ratified a bilateral maritime interdiction treaty. Due to these steps, President Bush on September 15, 2003, announced that Guatemala had taken initial steps to better its counter-narcotics practices and that the Government would be re-certified as cooperating with U.S. counter-

narcotics efforts. Since that 2003 determination, Guatemala has continued to cooperate with counter-narcotics efforts.

The Government has also developed a series of implementing regulations for the control of chemical precursors that bring Guatemala into compliance with UN conventions. The Financial Investigations Unit has made substantial progress in its ability to investigate financial crimes under comprehensive money laundering legislation enacted at the end of 2001. In recognition of this progress and other improvements in financial sector supervision, Guatemala was removed from the Financial Action Task Force list of non-Cooperating Countries and Territories in June 2004. The U.S. Government continues to work with Guatemala to advance development of comprehensive training programs to improve performance of the country's narcotics enforcement agents.

#### IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

The Guatemalan Government signed and completed ratification of the IACAC in July 2001, but there has been little action to implement the convention's requirements and recommendations, such as criminalizing "illicit enrichment." However, enrichment related to narcotics trafficking activity is now illegal. The Berger administration has taken steps to turn around the dramatic increase in government corruption under the previous administration, but solidifying institutional reform remains slow. Former president Portillo, Vice President Reyes and several senior officials that served during the previous administration are under investigation for their role in corruption scandals, and the former Superintendent of Tax Administration and Minister of Interior are in jail pending trial. The former Comptroller General was recently found guilty of fraud related charges and sentenced to 17 years in prison. The former Minister of Finance was released after spending one year in prison.

#### TRANSPARENCY IN GOVERNMENT PROCUREMENT

Government procurement is regulated under a 1992 law that establishes procedures for national and local government entities and quasi-state enterprises. Though the legislation is comprehensive in scope, transparency procedures are often avoided in cases where a project is declared to be of "national emergency." In an early 2002 "Consultative Group" meeting with donors and civil society groups, the Government committed to a series of legislative reforms, including reform of government procurement legislation. That commitment remains unfulfilled. In March 2004, the new administration made mandatory the use of Guatecompras, an Internet-based electronic system to publicize Guatemala's procurement needs, which is improving transparency in the government procurement process. Implementation of CAFTA-DR provisions should further improve government procurement transparency.

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